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GOVERNOR



LEONARD K. PETERS
SECRETARY

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET

MINE SAFETY REVIEW COMMISSION
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JOE F. CHILDERS, CHAIR
WILLIAM D. DONAN
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**MINE SAFETY REVIEW COMMISSION
MINUTES**

MINUTES OF THE REGULAR MEETING OF **MARCH 11, 2010**: A MEETING OF THE MINE SAFETY REVIEW COMMISSION (HEREINAFTER "MSRC" OR "COMMISSION") WAS HELD IN THE CONFERENCE AND HEARING ROOM OF THE COMMISSION LOCATED AT 132 BRIGHTON PARK BLVD., FRANKFORT KY.

- ❑ **Members Present:** Chair and Commissioner Joe F. Childers, Commissioner William D Donan and Commissioner Stephen A. Sanders were present. Also in attendance MSRC Hearing Officer and General Counsel Bryon Alan Thompson.
- ❑ The meeting was **called to order** at 9:00 a.m. EST
- ❑ **Declaration of a Quorum:** Upon the call of the meeting, Commissioner Donan made a motion that a quorum was present, which was seconded as appropriate. The motion carried unanimously, and was ratified by the Chair.
- ❑ **Welcome Guests:** Hon. Mike Haines, Energy and Environment Cabinet General Counsel was present and also staff attorneys for OGC; Smock, Pete Thompson, Patrick and Richardson who were representing the Office of Mine Safety and Licensing. The Office of General Counsel was assisted by Kari Sutherland, Mary McCoy, and Tara New. Mining Board Member Jim Vicini appeared to observe.
- ❑ The **minutes** for the meeting on **2/11/10** were discussed. Commissioner Donan made a motion for approval, which was seconded. The motion carried unanimously, and was ratified by the Chair.

- **OMSL Motions for Sanctions, Permanent or one (1) year Revocation for failure to comply with terms of the Settlement Agreement & Final Order by MSRC resolving KRS 351.120(12) workplace suspension for alcohol and substance abuse:**

 - 09-MSRC-271 Burns J. Stephens, 07-MSRC-107 Christopher S. Dunn, 07-MSRC-168 Ricky Howell, 08-MSRC-159 Ricky Jason Smith, 08-MSRC-160 Anthony W. Potter, 08-MSRC-189 Jayson Dwayne Collins, 09-MSRC-021 Jimmie A. Little, 09-MSRC-147 James D. Branham, 09-MSRC-202 Dallas R. Banks and 09-MSRC-234 Charlie Quinn were each called in turn. These miners did not appear or participate and no one on their behalf filed any response. Thus OMSL moved for **permanent revocation** based upon noncompliance with the required submittals, drug testing or evaluation terms of the Settlement Agreement incorporated as the Final Order of this Commission. This was found to be a violation of the Final Order. A motion was made to **grant** the motions as above which were seconded as appropriate and approved unanimously and were ratified by the Chair.
 - 08-MSRC-202 Markus D. Richardson, 08-MSRC-273 Billy Carl Ingram, 09-MSRC-076 James Jarrett Jr., and 09-MSRC-191 Jason Conn were each called in turn and a motion was made by OMSL to **continue** each for good cause shown. A motion was made to **grant** the motions as above which were seconded as appropriate and approved unanimously and were ratified by the Chair.
 - 08-MSRC-085 Mitchell D. Spicer, 08-MSRC-139 James D. Dixon, 09-MSRC-022 James A Newsome, 09-MSRC-073 Mackey Mills and 09-MSRC-102 Mason L. Williams were each called in turn. Each gave proof of extenuating circumstances and other reasons to allow entry of an **Amended Settlement Agreement** for enhanced testing to insure future compliance and rehabilitation. A motion was made to **grant** the motions as above which were seconded as appropriate and approved unanimously and were ratified by the Chair.
 - 08-MSRC-170 Tim Cornett, 09-MSRC-038 Mark Thurby, 09-MSRC-054 Scott A. Day and 09-MSRC-215 Bradley Wireman demonstrated compliance with the terms of the settlement agreement they entered and thus OMSL moved for a **withdrawal** of the Motion for Sanction. A motion was made to **grant** the motions as above which were seconded as appropriate and approved unanimously and were ratified by the Chair.
- **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” revocations:**

- The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 07-MSRC-243 Jared Stanley, 09-MSRC-176 Stephen R. Varney, 10-MSRC-009 Adam Thomas Adkins, 10-MSRC-010 Ricky Shaun Allen, 10-MSRC-012 Jeremy Keith Carlton, 10-MSRC-014 Jeremy McCoy, 10-MSRC-015 James W. Hunter, 10-MSRC-021 William Johnson Jr., and 10-MSRC-023 Jerry Keith Thacker were each called in turn. Each Petitioner appeared and requested a **Settlement Agreement** to resolve the allegations. Commissioner Childers recused as to Thacker citing a conflict. Commissioner Donan made a motion to **grant**, each of their settlements which were seconded as appropriate by Commissioner Sanders. The motions carried unanimously, and were ratified by the Chair.
- 10-MSRC-011 Glen Dale Merritt, Jr., requested a continuance to get a hair follicle test, and 10-MSRC-013 Michael A. Clifton called prior to the meeting to request a continuance. OMSL did not oppose the motion for **continuance**. Commissioner Donan made a motion to **grant**, which were seconded as appropriate by Commissioner Sanders. The motions carried unanimously, and were ratified by the Chair.
- 10-MSRC-003 Clyde E. Gordon was called and he failed to appear or contest and no one appeared on his behalf thus OMSL moved for **revocation**. Commissioner Donan made a motion to **grant**, which were seconded as appropriate by Commissioner Sanders. The motions carried unanimously, and were ratified by the Chair.
- 10-MSRC-022 Leonard Wayne Deaton was called for a hearing and upon testimony and proof his **appeal was sustained**. A motion was made to grant the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.

The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” one year revocations:

- 10-MSRC-024 Christopher Eversole, 10-MSRC-025 Jamey J. Bowman, 10-MSRC-026 Cecil R Slone and 10-MSRC-036 Benjamin S. Mosley and 10-MSRC-037 Devan R. Nantz were each called in turn. They did not appear or defend and no one appeared on their behalf. OMSL moved to **revoke** as to each. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.

- 10-MSRC-027 Michael J. Bruce, 10-MSRC-028 Randall Gross, 10-MSRC-029 Ronnie Hackney, 10-MSRC-030 Anthony D. Prater, 10-MSRC-032 Gregory Lee Rohr, 10-MSRC-033 Larry Hunley and 10-MSRC-034 John R. Conley were called in turn. OMSL moved for a **continuance** as to each to achieve service and for other reasons. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.
- 10-MSRC-031 Robert E. Dillon and 10-MSRC-035 Bobby L. Moore appeared and each requested a **Settlement Agreement**. A motion was made to **grant** the motion as above which was seconded as appropriate and approved unanimously and was ratified by the Chair.

The 11:00 a.m. Docket for Motions to Modify prior Orders:

- 08-MSRC-238 Louis Sandlin appeared but failed to meet his burden of proof of providing two negative drug tests prior to consideration of any modification of a prior order. A motion was made to **deny**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.
- 08-MSRC-217 Brian Caldwell failed to appear despite an earlier appearance wherein he expressed a desire to be reinstated. Previously the matter was continued to allow him to obtain drug tests and prepare his case. Thus he did not meet his burden of proof. Commissioner Donan made a motion to **deny**, which was seconded as appropriate by Commissioner Sanders. The motion carried unanimously, and was so Ordered. Chair Childers signed the Order.
- 08-MSRC-250 Jason B. Combs and 07-MSRC-200 Rocky Niece appeared and met their burden of proof to amend a prior Order into terms of an amended **settlement** that required expanded drug testing. Commissioner Donan made a motion to grant, which was seconded as appropriate by Commissioner Sanders. The motions carried unanimously, and were so Ordered. Chair Childers signed the Orders.

11:00 a.m. Appeal of Penalty Assessment

None submitted for this meeting.

The 11:00 a.m. Docket for “traditional” type cases:

- 09-MSRC-219 Kilbourne and 08-MSRC-105 McCarty, Hall & Howard were each called in regard to a **Settlement Agreement** as to each party. Commissioner Donan made a motion to **grant**, which was seconded as appropriate by Commissioner Sanders. The motions carried unanimously, and were so Ordered. Chair Childers signed the Orders.

Petitions for an Order filed by OMSL in roof control cases:

None submitted for this meeting.

The 1:00 p.m. Docket for “traditional” type cases:

None submitted for this meeting.

Old Business

❑ **Ratification of Final Order:**

The Final Order in 09-MSRC-040 Francis, Lester & Dotson was issued by the Commission.

❑ **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting on Thursday April 8, 2010, and the possibility of one or more traditional type hearings.

❑ **Status Report & Abeyances;**

None submitted for this meeting.

❑ **Appeals**

- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 05-MSRC-004 **Simon Ratliff**, and was informed the matter has been **submitted** for a ruling.
- ❑ The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 07-MSRC-088 **Jerry J. Maggard**, et al. Hon.

Smock, counsel for OMSL stated the matter has been **submitted** for a ruling.

New Business

❑ Office & Administrative;

- ❑ The General Counsel advised that the **mileage** is now forty one (41) cents per mile.

❑ Training

- **Required Hearing Officer Training:** Next training is in June.
- ❑ **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the motions & settlements in the cases as above and then reconvened to issue its determinations.

❑ Probable Cause Determinations

- 10-MSRC-017 Quinton Combs 10-MSRC-016 Jarrell, Roman, Edmiston & Fools, 10-MSRC-018 IGC Knott County, 10-MSRC-019 Mullins, Johnson, Slone & Shorty and 10-MSRC-020 Noble, Vance & D&D were each were presented for a Probable Cause Determination. Commissioner Donan made a motion to grant as to each, which were seconded as appropriate by Commissioner Sanders. The motions carried unanimously, and were so Ordered. Chair Childers signed the Orders.

❑ Settlement Agreements

The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.

- ❑ **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.
- ❑ **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday April 8, 2010.**


- **Adjournment:** Commissioner Donan made a motion to adjourn, which was seconded by Commissioner Sanders. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Thursday April 8, 2010. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:



Chair Hon. Joe F. Childers
Mine Safety Review Commission



Date